

FCC MAIL SECTION
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554
JUN 9 8 13 AM '98 June 5, 1998

DISPATCHED BY

In Reply Refer To:
1800B3-MFW

Stefan Presser, Esq.
Nolan Bowie, Esq.
ACLU Foundation of Philadelphia
125 South 9th Street
P.O. Box 1161
Philadelphia, PA 19105-1161

In re: Unlicensed FM station, Philadelphia,
Pennsylvania
Radio Mutiny
Request for waiver of FCC rules limiting
low power FM service

Gentlemen:

Your letter to Chairman William F. Kennard, dated December 19, 1997, has been referred to me for response. In that correspondence, you request waiver of the Commission's regulations to permit your client, "Radio Mutiny," to operate an unlicensed FM station transmitting on 91.3 MHz in Philadelphia, Pennsylvania, with an effective power of no more than 20 watts. You acknowledge that your client is operating without a broadcast license issued by the Commission, but indicate that "this is solely because [the Commission's] regulations . . . do not permit the licensing of a station such as theirs which operates on 20 Watts of power. In support of the request for waiver, you indicate that, apart from the warning issued by the Commission on November 25, 1997, no other governmental entity or private party has expressed concern over Radio Mutiny's operation. You also indicate that your client believes that it is entitled to continue broadcasting "in light of this nation's commitment to free speech which is enshrined in the First Amendment of our Constitution." You therefore ask that we take all necessary steps to ensure Radio Mutiny's continued operation. For the reasons set forth below, we will dismiss the waiver request.

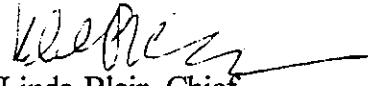
In the absence of an application for a license, your request amounts to a request for approval of an unlicensed broadcasting operation. Section 301 of the Communications Act, however, requires a license in order to broadcast and the Commission has no authority to waive that statutory requirement. 47 U.S.C. § 301. The Commission does have authority to waive its rules limiting low power FM service that, absent a waiver, would preclude the grant of an application for a low power FM broadcast station. 47 C.F.R. § 1.3. But we will not consider a request for a waiver of these rules or a challenge to the validity of the rules except in the context of a petition for rule making to change the rules, 47 C.F.R. § 1.401, or a

"written" application for a license with the information required by Section 308 of the Communications Act, 47 U.S.C. § 308, and the Commission's implementing regulations, together with a request for waiver of the relevant rules. 47 C.F.R. § 73.3566; *see generally* *Stephen Paul Dunifer*, 11 FCC Rcd 718, ¶¶ 8-9 (1995). Accordingly, the waiver request IS HEREBY DISMISSED.

We underscore that Radio Mutiny has no authority to operate an FM radio station. Any operation occurring prior to or during the pendency of this waiver request was unauthorized. A copy of this letter is being forwarded to the Commission's Compliance and Information Bureau for whatever action it deems necessary in this matter.

Finally, we note that three separate parties have recently filed petitions for rule making regarding low power broadcast stations. *See Public Notice, Rule Making No. 9246* (March 18, 1998); *Public Notice, Rule Making No. 9242* (February 20, 1998); and *Public Notice, Rule Making No. 9208* (February 5, 1998). While the comment period in these proceedings expired on April 27, 1998, your client may wish to initiate its own rule making proceeding under 47 C.F.R. §1.401.

Sincerely,


for Linda Blair, Chief
Audio Services Division
Mass Media Bureau

cc: Pamela Hairston
Suzon Landeck
David Silberman